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IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

BROWN UNIVERSITY, ET AL.,

Petitioners,

v.

AMY COHEN, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF OF AMICI CURIAE AMERICAN COUNCIL ON EDUCATION, AMERICAN ASSOCIATION OF STATE COLLEGES AND UNIVERSITIES, ASSOCIATION OF AMERICAN UNIVERSITIES, NATIONAL ASSOCIATION OF INDEPENDENT COLLEGES AND UNIVERSITIES, AND NATIONAL ASSOCIATION OF STATE UNIVERSITIES AND LAND-GRANT COLLEGES IN SUPPORT OF PETITIONERS

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STATEMENT OF INTEREST OF AMICI CURIAE

The American Council on Education is a national organization that represents approximately 1800 higher education institutions, including a substantial majority of public and private colleges and universities in the United States. Its principal purpose is to further the interests of component groups of the higher education community,

including students, faculty, administration, and employees. The American Association of State Colleges and Universities represents more than 370 state colleges and universities; it sponsors research and publishes reports on numerous aspects of higher education. The Association of American Universities represents approximately 60 public and independent American and Canadian universities with strong programs of graduate and professional education and research. The National Association of Independent Colleges and Universities represents over 840 independent colleges and universities on public policy issues before the legislative, executive, and regulatory branches of the federal government. The National Association of State Universities and Land-Grant Colleges represents over 170 public research universities; it works to support the contributions that state and land-grant universities make through teaching, research, and public service/extension.

Amici collectively represent the breadth and diversity of American higher education. They share a commitment to fulfill the mandate of Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688, including by expanding educational opportunities for women where doors previously have been closed to them, and by ensuring that all men and women in American colleges and universities receive an education free of sex-based discrimination.

Amici's members strongly support the objective of Title IX to enable women to develop their full potential in athletics as well as in other educational endeavors. Colleges and universities throughout this country greatly enlarged their athletic offerings for women after the statute's passage, and the number of women participating in college varsity sports has burgeoned. With this brief amici do not suggest that the goal of Title IX has been everywhere realized or that all discrimination against women has been eradicated. As shown below, however, the goal of eradicating discrimination is disserved by the legal standard the First Circuit adopted in this case.

Under that standard, colleges and universities that do not discriminate are at risk of being held in violation of Title IX simply because men and women choose not to participate in varsity athletic programs in statistical proportion to their

enrollment. Only two alternatives to proportional representation of the sexes in varsity sports programs can be tolerated under the First Circuit rule: "march[ing] uninterruptedly" toward statistical parity by continually expanding women's programs, or "fully" meeting all women's (but not men's) athletic interests, even if that means giving women "what amounts to a larger slice of a shrinking athletic-opportunity pie." Pet. App. 34a[1] (internal quotation marks omitted). Amici believe that the First Circuit ruling will frustrate their members' efforts to comply with the statute.

This brief is filed with the consent of the parties. Consent letters have been filed with the Clerk.

STATEMENT OF THE CASE

This case arises from a decision of a divided panel of the United States Court of Appeals for the First Circuit holding that Brown University -- which dramatically expanded its women's athletics program in the years after Title IX was enacted, Pet. App. 6a -- violated the statute when financial pressures forced it to change two women's and two men's teams from university-funded to donor-funded status. The First Circuit held that a university's varsity athletics program always violates Title IX unless (1) men and women participate in the program in numbers substantially proportionate to their respective undergraduate enrollments at the university, or (2) the university "continu[ously]" expands its women's athletics program, or (3) "fully" satisfies all athletic interest of women. *Id.* at 32a, 189a-190a.

Amici adopt the statement of the case set forth in the Petition. We emphasize, moreover, that Brown's commitment to providing equal opportunity for all of its students, its success in developing a strong women's sports program, and its inability to satisfy the rigid three-part test notwithstanding these affirmative efforts, in salient respects mirror the experience of many American colleges and universities.

Colleges and universities over the last two decades have made enormous progress in effectively encouraging women's

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[1] "Pet. App." refers to Petitioners' Appendix.

participation in their programs. At the time of Title IX's passage, many institutions had only recently begun to admit women. Today women receive more than half of the bachelor's degrees awarded nationally and graduate in large numbers with majors and degrees in fields, such as engineering and the physical and life sciences, historically dominated by men. *See* National Center for Education Statistics, *Digest of Education Statistics 1996* at 253, 258-265 (1996).

Higher education institutions' commitment to Title IX is manifest in their athletic programs, which teach students physical skills, leadership skills, self-discipline, and the value of teamwork. Colleges and universities have made major efforts to encourage women to participate in sports, in an attempt to reverse swiftly centuries of cultural stereotyping that has impeded the realization of women's athletic potential. *See generally* Diles, *Historical Overview of Title IX*, *in* National Association of College and University Attorneys, *A Practical Guide to Title IX: Law, Principles, and Practices* 3, 10-18 (Connolly ed. 1995) (explaining that various factors, including misunderstandings about women's health and cultural images of women as passive and fragile, historically have limited women's participation in competitive sports).

Across the country, athletic offerings available to women have been vastly expanded. Shortly after Title IX was enacted in 1972, women's participation in intercollegiate sports increased substantially. By 1984, the percentage of college varsity positions held by women had more than doubled, from 15 to over 30 percent. *See* Davidson & Kerr, *Title IX: What Is Gender Equity?*, 2 Vill. Sports & Entertainment L.F. 25, 25 (1995). Since then, women have consistently filled about 30 to 36 percent of varsity positions nationwide. *See* National Collegiate Athletic Association, *Participation Statistics Report* 5 (1995).

Colleges and universities today routinely field a wide array of both men's and women's intercollegiate teams, such as basketball, track, fencing, tennis, swimming, lacrosse, soccer, skiing, and volleyball. At the time of trial in this case, for example, Brown offered 16 varsity sports for women and 16 for men. Pet. App. 7a. At some institutions, including

Brown, women also participate on co-ed teams in non-contact sports such as crew and golf. *Id.* at 97a.

Just as men and women for various complex reasons often have shown different interest levels in particular academic subjects and other educational activities, so have they in intercollegiate sports. No observer's crystal ball has yet predicted reliably the percentage of women who will want to participate in intercollegiate sports ten, twenty, or one hundred years from now. By all measures, however, men and women do not now participate in competitive sports to the same extent, nor have they historically.

Nationwide, men and women now participate in intercollegiate varsity programs at a ratio of approximately two to one. That ratio reflects the percentages of girls and boys who participate in competitive high school sports, from which many, if not most, college varsity players are attracted. *See* Davidson & Kerr at 28. Notably, moreover, women's participation in college varsity athletics exceeds their participation in other college sports programs, such as club and intramural sports. Nationally, men participate almost twice as often as women in club sports, and the ratio of men to women playing intramural sports is almost four to one. *See* Brief of Appellants at 12 nn.15 & 16, *Cohen* v. *Brown Univ.*, 101 F.3d 155 (1st Cir. 1996) (summarizing record evidence).

The record in this case also shows that women and men consistently demonstrate different interest levels in playing intercollegiate sports. For example, over a four-year period, male applicants to Brown expressed much more interest in playing competitive sports than did female applicants. Annual surveys of Brown's entering freshmen classes likewise show that more men than women plan to participate in varsity programs. These results are consistent with a recent independently conducted nationwide survey showing that only 35 to 40 percent of college freshmen who proposed to play varsity sports were women. *See id.* at 8-14.

SUMMARY OF ARGUMENT

This Court has repeatedly held that statistical evidence of discrimination, to be meaningful, must draw comparisons that illumine the legal question at issue and have a reasonable basis

in fact. The First Circuit did not heed that directive in this case.

Title IX, which amici strongly support, requires equal opportunity. Its plain language, its legislative history, its implementing regulation, and interpretations of the enforcing agency all eschew findings of unequal opportunity based solely on statistical disparity of participation. The First Circuit test, by contrast, establishes a presumption that an institution has discriminated whenever the percentages of men and women participating in its intercollegiate athletics program are not proportional to their enrollment. The presumption has no empirical basis, because, for reasons not connected to a college's or university's conduct, fewer women currently choose to participate in intercollegiate sports than do men. The presumption also has no basis in the governing statute and regulation, which make clear that colleges and universities need not achieve statistical balance in their athletic programs so long as men's and women's differing athletic interests are accommodated equally effectively.

Further, the First Circuit presumption is effectively irrebuttable, because the court's three-part test permits colleges and universities to avoid an adverse finding only if they continuously expand athletic programs for women or meet the athletic interests of every woman (but not every man) who is qualified to play on a viable varsity team. Many institutions cannot satisfy this test, both because their resources are finite and because to do so in practice would entail elimination of programs merely because men participate in them.

Remarkably, the First Circuit presumption has been adopted by several other circuits and the federal agency responsible for enforcing Title IX. It therefore affects virtually every college and university in the country. Shorn of the impracticable alternatives it offers, the test effectively requires numerical equivalence and concludes that whenever there is statistical imbalance, the institution must fully accommodate all athletic interest of women, regardless of the impact on other educational programs.

By converting a sound and desirable antidiscrimination principle into a mandate for numerical equivalence between the sexes, the test collides with the core precept of Title IX -- that students shall not be subjected to sex discrimination. The decision below cannot be reconciled with law, logic, or experience and warrants plenary review by this Court.

ARGUMENT

I. THE FIRST CIRCUIT TEST FOR DETERMINING TITLE IX COMPLIANCE IS IRRECONCILABLE WITH THE STATUTE, THE REGULATION, ADMINISTRATIVE INTERPRETATIONS, AND THIS COURT'S PRECEDENTS

The First Circuit test establishes a legal presumption of discrimination whenever there is a statistical disparity between the percentage of women in a college's varsity athletic program and the percentage of undergraduate women. Pet. App. 23a. As this Court has often stated, evidentiary presumptions are warranted when "supported by considerations of 'fairness, public policy, and probability.'" *United States Dep't of Justice* v. *Landano*, 508 U.S. 165, 174 (1993) (quoting *Basic Inc.* v. *Levinson*, 485 U.S. 224, 245 (1988)). The presumption here has none of those attributes.

If there were persuasive evidence that, absent the discrimination prohibited by Title IX, equal numbers of women and men would participate in varsity athletics, the presumption might be warranted. But -- notwithstanding the lower court's erroneous suggestion to the contrary, Pet. App. 187a -- amici know of no congressional or administrative determination that this is so, and compelling evidence shows that it is not.

As explained above, despite the vast expansion of women's athletics programs in the years following Title IX's passage, women continue to participate in varsity, club, and intramural sports far less than do men, relative to their enrollments. The record in this case demonstrates that, by a variety of measures, women and men have expressed different interest levels in participating in competitive sports. That the causes underlying those choices are complex and deeply rooted in historical, sociological, and cultural factors amici fully

acknowledge. The language and history of Title IX show, however, that such factors, unless connected to institutional discriminatory conduct, do not make out a violation of the statute.

Title IX, which prohibits discrimination in educational programs and activities on the basis of sex, 20 U.S.C. § 1681(a), clearly does not mandate numerical equivalence between the ratio of men and women in a college's sports program and in its student body. Section 1681(b) specifically precludes interpretations of the statute that "require any educational institution to grant preferential or disparate treatment to the members of one sex" based on a statistical imbalance between the percentages of men and women in an educational program and in any larger community. *Id.* § 1681(b).

Although section 1681(b) provides that some statistical evidence may be probative of a Title IX violation, *id.*, nothing in the statute suggests that a discrimination finding can be predicated on a statistical comparison between men's and women's enrollment rates and their participation in athletic programs. Congress not only legislated no such statistical test, it abjured doing so. The members of Congress who supported passage of Title IX repeatedly disavowed similar statistical comparisons with regard to admissions. *See, e.g.*, 117 Cong. Rec. 30,406 (1971) (statement of Sen. Bayh: statute does not require "a 50-50 ratio" of men and women in every educational program); *id.* at 39,251 (statement of Rep. Green: "[I]f a college has 5,000 men and 3,000 or 4,000 women," Title IX does not require it to "bring the number of women up to 5,000. If we do that, then we are engaging in discrimination, also. In that case we would be discriminating against men"); *id.* at 39,252 (statement of Rep. Mink: "Even if 90 percent of those admitted to science departments were men, there could be no complaint as long as those women who did apply were considered on an equal basis with men").

Likewise, the statute's implementing regulation, 34 C.F.R. §§ 106.1-106.71, recognizes that, with regard to athletics, men's and women's participation will differ, and the difference cannot be equated with discrimination. Because their athletic interests are not fungible, the regulation specifically permits separate men's and women's teams, *id.*

§ 106.41(b), and makes athletic participation levels, rather than student enrollment, the benchmark for determining whether an institution's athletic scholarships comport with the statute, *id.* § 106.37(c). Thus, the measure of discrimination is not numerical equivalence between the sexes, but whether men's and women's differing athletic interests are "effectively accommodate[d]." *Id.* § 106.41(c)(1).

The First Circuit presumption is drawn not from the statute or regulation, but rather from a brief and not particularly prominent passage of a 1979 policy statement issued by the federal agency responsible for administering Title IX.[2] *See* Title IX of the Education Amendments of 1972; a Policy Interpretation; Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71,413, 71,418 (Dec. 11, 1979) ("Policy Interpretation"). The presumption, however, is not even consistent with the agency's own interpretations of the statute. The agency repeatedly has read Title IX to require not an equal number of women and men in athletic programs, but equal athletic opportunities for both sexes, respectful of their different athletic interests.

For example, when it issued its proposed Policy Interpretation for public comment, the agency expressly recognized that "[i]ntercollegiate athletic programs that provide equal opportunities for both sexes may offer different sports, and have different participation rates and varying competition opportunities for men and for women, because their interests and abilities may be different," and that "[t]hese differences will result in different men's and women's programs that do not violate Title IX." Title IX and Intercollegiate Athletics; Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance, 43 Fed. Reg. 58,070, 58,072 (Dec. 11, 1978). *See also id.* at 58,074 ("The Title IX regulation does not require an equal number of men and women participants or an equal number of men's and women's sports. Rather, it requires that the interests and abilities of men and women be equally accommodated").

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[2] In the 1970s Title IX was administered by the Department of Health, Education, and Welfare. It is now administered by the Office of Civil Rights (OCR) of the Department of Education.

The final Policy Interpretation reaffirms that statistical balancing is not the statutory goal. *See* 44 Fed. Reg. at 71,414 ("[T]he governing principle * * * is that the athletic interests and abilities of male and female students must be equally effectively accommodated"). For example, it asks whether the "competitive schedules for men's and women's teams * * * afford proportionally similar numbers of male and female *athletes*" -- not students enrolled -- "equivalently advanced competitive opportunities." *Id.* at 71,418 (emphasis added). And in determining an institution's overall compliance with the equal opportunity requirement, the Policy Interpretation asks not whether the institution provides benefits to men and women proportional to their enrollments, but whether "the institution's athletic program as a whole" exhibits "disparities of a substantial and unjustified nature in the benefits, treatment, services, or opportunities afforded male and female athletes." *Id.*

The agency's investigator's manuals have stressed the same principles. The 1980 manual, for example, explained that "Title IX does not require institutions to offer a proportional number of intercollegiate participation opportunities," but rather "requires institutions to meet the interests and abilities of women to the same degree as they meet the interests and abilities of men, by providing opportunities which address the interests and abilities of each sex equally." Office of Civil Rights, U.S. Dep't of Education, Title IX Intercollegiate Athletics Investigator's Manual 122 (1980). The 1990 manual likewise stated that an institution, to comply with Title IX, must show that its athletic program "equally effectively accommodates student interests and abilities." Office of Civil Rights, U.S. Dep't of Education, Title IX Athletics Investigator's Manual 25 (1990).

Thus, the First Circuit's erroneous statistical gauge not only contravenes the governing statute and regulation, but also is an anomaly even among the administering agency's own pronouncements. Loosed from its moorings in the agency's overall enforcement scheme, the presumption is irreconcilable with Title IX's equality principle. The First Circuit therefore erred in deferring to it. *See Stinson* v. *United States*, 508 U.S. 36, 45 (1993) (no deference owed to agency interpretation that is inconsistent with federal statute or

regulation). *See also Thomas Jefferson Univ.* v. *Shalala*, 512 U.S. 504, 512 (1994) (no deference owed to agency interpretation where different reading "'is compelled by * * * other indications of the [agency's] intent at the time of the regulation's promulgation'" (quoting *Gardebring* v. *Jenkins*, 485 U.S. 415, 430 (1988))).

The presumption also conflicts with this Court's decisions interpreting Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2000e-17, which prohibits employment discrimination on the basis of sex and other enumerated characteristics. *Id.* § 2000e-2(a). Those decisions make clear that, while statistical evidence may be useful in proving the existence or absence of discrimination, *see, e.g.*, *Hazelwood Sch. Dist.* v. *United States*, 433 U.S. 299, 307 (1977), *International Bhd. of Teamsters* v. *United States*, 431 U.S. 324, 339 (1977), such evidence must comport with the statute's purpose and have a reasonable basis in fact.

For example, in *Wards Cove Packing Co.* v. *Atonio*, 490 U.S. 642 (1989), this Court rejected, as nonprobative, statistical evidence that compared the high percentage of an employer's nonwhite workers in unskilled positions with the low percentage of nonwhites in higher-paying, skilled positions. That comparison was "nonsensical," according to the Court, because the absence of minorities in skilled positions could have been due to a shortage of qualified minority applicants "for reasons that are not [the employer's] fault." *Id.* at 651.

Here, as in *Wards Cove*, "'[t]here can be no doubt'" that the First Circuit's comparison between students' athletic participation rates and enrollment "'fundamentally misconceived the role of statistics in * * * discrimination cases.'" *Id.* at 650 (quoting *Hazelwood*, 433 U.S. at 308). The comparison disregards reliable and uncontroverted evidence that men's and women's athletic interests differ for a variety of reasons unrelated to a college's or university's conduct and therefore cannot be probative of whether an institution has discriminated.

The First Circuit deemed this Court's Title VII decisions irrelevant, reasoning that sports teams, unlike most jobs, are often segregated by sex. Pet. App. 36a-39a. That difference

probably does signify that the particular analyses used under Title VII should not apply in exactly the same way under Title IX. But the difference between the laws' contexts plainly does not render inapposite the principles this Court has developed to govern the probative value of statistical evidence in discrimination cases. On the contrary, because section 1681(b) of Title IX was expressly modeled on a similar provision in Title VII, 42 U.S.C. § 2000e-2(j), *see* 117 Cong. Rec. 39,261-39,262 (1971), the First Circuit should have been guided by this Court's Title VII precedents. *See West Virginia Univ. Hosps., Inc.* v. *Casey*, 499 U.S. 83, 94-95 (1991) (relying on construction of similarly worded laws as guide to interpreting statute).

II. THE TEST IMPOSES INSURMOUNTABLE BURDENS ON COLLEGES AND UNIVERSITIES AND MAY LEAD TO THE VERY DISCRIMINATION THAT TITLE IX PROHIBITS

Although the First Circuit characterized its proportionality test as "a rebuttable presumption, rather than an inflexible requirement," Pet. App. 23a, the presumption "is in practice all but irrebuttable." *Landano*, 508 U.S. at 177. The inference of discrimination that arises from a statistical disparity between student athletic participation and enrollment can be overcome in two and only two ways: with evidence that the institution has "fully" accommodated all desires of women who are interested and able to play varsity sports (provided there is enough interest to support a team and a competitive schedule), or with evidence that the institution is continuously increasing its women's sports program.

No college or university is likely to have unlimited resources to achieve these extreme measurements. Brown does not. Neither measure reliably demonstrates whether an institution provides men and women equal athletic opportunities. Neither is a good, and certainly not an infallible, test of whether an institution practices sex-based discrimination. Rather, as the First Circuit candidly acknowledged, each is but another "proxy for gender balance," Pet. App. 181a -- a balance that Title IX emphatically does not require.

1. *Continuing Program Expansion.* Whatever merit the "continuing program expansion" concept may have had shortly after Title IX was enacted -- when the concept enabled an institution that had no women's athletic program to avoid an adverse finding by showing substantial efforts to come into compliance -- it has none now. The requirement makes little sense today, when women's sports programs are ubiquitous and women participate in competitive sports in the largest numbers ever.

Indefinite continued expansion of women's (or men's) athletic programs is infeasible for many colleges and universities. And there is no reason to require it, since the absence of continuing program expansion at an institution with an already vital women's program cannot be dispositive or even probative of whether the institution discriminates against women athletes. As Chief Judge Torruella recognized in dissent, there is "no possible justification" for a rule that requires a college continually to increase athletic opportunities for women, "even if it cannot afford to do so," until a program of a particular size is achieved. Title IX is "intended to protect against discrimination, not to promote athletics on college campuses." *Id.* at 72a.

Moreover, the requirement perversely penalizes institutions such as Brown that sought energetically to bring their athletic programs into compliance with Title IX soon after the statute's enactment. Under the First Circuit rule, a university cannot achieve statutory compliance by immediate equal accommodation of men's and women's athletic interests. Rather, it must demonstrate a continuing program of improvements -- indeed, a perpetual one. The inquiry therefore creates a peculiar and contrary incentive for institutions: to delay needed improvements in women's athletic programs so that ongoing betterment can be displayed.

2. *Full Accommodation.* The only other way that an institution faced with statistical disparity between women's enrollment and athletic participation can achieve Title IX compliance under the First Circuit test is to accommodate women's athletic interests "fully." In practice, under this requirement the institution must create and fund a women's varsity team when even one woman wants and is able to

compete -- regardless of the expense, and regardless of the impact on all other university programs. Academic course offerings, scholarship aid, even dormitory maintenance are to be sacrificed to achieve full accommodation of women's sports interests. And even then, as the dissent observed, the test is "virtually impossible" to satisfy, because "[u]nder even the largest athletic program, it would be surprising to find that there is not a single student who would prefer to participate in athletics but does not do so because the school does not offer a program in the particular sport that interests the student." *Id.* at 74a.

Like the "continuing program expansion" requirement, the "full accommodation" requirement places an onerous and unprecedented financial burden on colleges and universities that, like Brown, already spend millions of dollars annually to provide students with broadly diverse athletic opportunities. There is no basis in the law for requiring the *full* accommodation of members of one sex -- particularly when such accommodation is not linked to or designed to remedy discrimination by the institution.

That women's interests may not be fully met does not, by itself, prove discrimination, because it ignores the way that an institution treats men. If men's and women's interests are equally effectively accommodated, there is no differential treatment, and thus no violation of the statute, regardless of the extent to which some individuals' wishes are unrealized. Any other reading vitiates Title IX's equal opportunity mandate.

Further, institutions that attempt to comply with the "full accommodation" requirement do so at risk of violating the rights of male students. If *all* expressed athletic interest of women is met, it may well be impracticable for an institution also to meet interests of men, because men generally express far more interest in participating in sports at all levels of competition than do women. And if women are accommodated because of their sex more than men are, then men are likely to claim that they are deprived of equal opportunity.

Equal educational opportunity for men and women is an exceedingly important goal that amici's member institutions

have undertaken to achieve. But the means the First Circuit has adopted of measuring a university's compliance with Title IX's prohibition against sex-based discrimination in athletic programs -- a test that by its nature neither identifies nor remedies discriminatory practices -- is at war with the statutory objective.

III. THE TEST AFFECTS HIGHER EDUCATION INSTITUTIONS THROUGHOUT THE COUNTRY AND WARRANTS THIS COURT'S PLENARY REVIEW

The test that the First Circuit embraced has been adopted by a number of circuits, Pet. App. 26a, and was recently endorsed by the federal agency charged with administering Title IX. *Id.* at 294a-316a. Thus, colleges and universities across the country are at risk of judicial or administrative determinations that their athletic programs violate Title IX -- even though they have undertaken in good faith to provide equal opportunities for all student athletes -- simply because men and women, for a variety of reasons unrelated to institutional discrimination, choose not to participate in varsity sports in the same numbers.

At its core, this case is about whether Title IX holds higher education institutions axiomatically accountable for college women's and men's choices whether to participate in intercollegiate sports, and whether Title IX signifies that institutions that have tremendously expanded athletic opportunities for women must do still more, even absent evidence of discriminatory conduct. These questions are not accurately answered by the First Circuit's rigid three-part test. Because the decision below conflicts with this Court's antidiscrimination jurisprudence, is clearly wrong, and presents an issue of exceptional importance to higher education institutions throughout the Nation, amici urge this Court to grant certiorari.

CONCLUSION

For the foregoing reasons, and for the reasons stated in the Petition, amici respectfully urge this Court to grant the Petition for a Writ of Certiorari.

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